

**BOARD OF APPEALS CASE NO. 4883**

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**BEFORE THE**

**APPLICANT: Barbara Saylor**

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**ZONING HEARING EXAMINER**

**REQUEST: Special Exception and  
variance to permit a kennel and pen  
less than 200 feet from lot line;  
2844 Sharon Road, Jarrettsville**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 1/6/99 & 1/13/99**

**Record: 1/8/99 & 1/15/99**

**HEARING DATE: February 24, 1999**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Barbara Saylor, appeared before the Hearing Examiner requesting a Special Exception to Section 267-53(H)(3) of the Harford County Code to operate a kennel and a variance to reduce the required 200 foot setback for the kennel to 9 feet from any lot line.

The subject parcel is located at 2844 Sharon Road in the Fourth Election District. The parcel is identified as Parcel No. 315, in Grid 1-B, on Tax Map 33. The parcel contains 1 acre, more or less, all of which is zoned Agricultural.

Ms. Barbara Saylor appeared and testified that she has owned the subject parcel for approximately 1 year and that the parcel is improved by a single-family dwelling, a tool shed with dimensions of 15 feet by 20 feet, and a 10 foot by 10 foot chain-link dog kennel. Ms. Saylor said that she owns 5 Siberian Huskies and 1 Chihuahua. In addition, she indicated that she has 5 other Siberian Huskies on the premises which she has obtained from animal shelters where the animals were to be euthanized. Ms. Saylor also testified that she has 4 puppies and several cats on the premises. Ms. Saylor said that denial of the Special Exception and variance would cause practical difficulty because she would be unable to continue rescuing unwanted Siberian Huskies and the animals would be euthanized. Ms. Saylor said that when the dogs are returned to good health and are spayed or neutered, she puts the dogs up for adoption.

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**Ms. Saylor went on to testify she did not feel that approval of the Special Exception and variance would be detrimental to adjacent properties because the dogs do not bark often, they are not aggressive and are not dangerous to the neighborhood. Ms. Saylor said that her dwelling is occupied by her daughter and herself and that she works full-time in Baltimore City and that her daughter is 13 years old and attends school. She said her daughter returns home late in the afternoon and the dogs are unattended most of the day.**

**On cross-examination by the People's Counsel, the Applicant said that her lot is similar in size to other lots and that there is nothing different or unique about her property. The Applicant said that her yard is fenced, that one dog is generally kept in the 10 foot by 10 foot chain-link kennel, and that the rest of the dogs have free access to the remainder of the fenced rear yard.**

**Ms. Christine Dilworth appeared and testified that there are two houses between the Applicant's property and her residence. Ms. Dilworth said she can clearly see the back and front yards of the Applicant's property and the fenced area. She said she can also see the 10 foot by 10 foot chain-link kennel. Ms. Dilworth testified from a detailed list of dates when the Applicant's dogs were loose in the neighborhood and that she has seen as many as 8 dogs at a time in the Applicant's rear yard. Ms. Dilworth said she is opposed to the Special Exception and variance to the setback requirements because the Applicant's dogs whine and howl, which has a tendency to cause other dogs in the neighborhood to do the same. Ms. Dilworth said the Applicant's dogs are in the yard both day and night, that they whine, howl and bark, and there are too many dogs on the property for the Applicant and her daughter to control.**

**Mr. Donald Ennis appeared and testified that his property adjoins the Applicant's parcel and that on numerous occasions the Applicant's dogs have been loose on his property. Mr. Ennis said that although the dogs are not aggressive, he just does not want the dogs on his property because he has two children. Mr. Ennis said the Applicant does not control the dogs and that they are able to get over the fence on the Applicant's property without much difficulty.**

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The Staff Report of the Department of Planning and Zoning recommends denial of the Special Exception and variance and provides:

“The subject property is a small one-acre lot which does not provide adequate setbacks to reduce impacts on the adjacent residential properties.... Therefore, the proposed use does not appear to be compatible with the surrounding neighborhood.”

### **CONCLUSION:**

The Applicant is requesting a Special Exception to Section 267-53(H)(3) of the Harford County Code, which provides:

“Kennels. These uses may be granted in the AG, VB, B1 and B2 Districts, provided that all buildings for the shelter of animals and all runways shall be at located at least two hundred (200) feet from any lot line.”

The Applicant is also requesting a variance to the required 200 foot setback from a lot line and is proposing a 9 foot setback.

Section 267-11 authorizes the granting of variances, provided the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.

Special Exceptions require approval of the Board and a Special Exception cannot be granted if the Board finds the proposed building, addition, extension or building or use, use or change of use, would adversely effect the public health, safety and welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood.

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The appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the proposed use proposed at the particular location would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 291 Md. 1 (1981).

The evidence introduced by the Applicant is that the subject parcel contains 1 acre, is improved by a single-family dwelling, tool shed, a 10 foot by 10 foot chain link kennel, and a portion of the rear yard is enclosed with a fence. The Applicant said that she rescues Siberian Huskies, has them neutered or spayed, returns them to good health and places them up for adoption. The Applicant said she currently owns 5 Siberian Huskies herself, and she owns a Chihuahua, has 5 other Siberian Huskies which are up for adoption, 4 Siberian Husky puppies and 4 cats. The Applicant failed to introduce testimony that the subject parcel is unique or different from any other lots and testified on cross-examination by People's Counsel that her parcel is no different than any other parcels in the neighborhood.

The Applicant has also failed to show that approval of the Special Exception at the proposed location would not have an adverse effect above and beyond those inherently associated with a similar Special Exception irrespective of its location. To the contrary, the Applicant's neighbors testified that the Applicant has trouble restraining the dogs, that the dogs bark and whine, and the dogs are frequently loose in the neighborhood.

It is the finding of the Hearing Examiner that the Applicant has failed to show that the subject property is unique which would justify the granting of the variance to reduce the required 200 foot setback to 9 feet. Therefore, it follows that since the variance is denied, the Special Exception must be denied because the Applicant is unable to maintain a 200 foot setback and the Applicant has failed to introduce testimony that approval of the variance will not have an adverse effect above and beyond those inherently associated with a similar Special Exception irrespective of its location.

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Therefore, it is the recommendation of the Hearing Examiner that the requested variance to reduce the setback from 200 feet to 9 feet and the Special Exception for a kennel be denied.

**Date        MARCH 15, 1999**

**L. A. Hinderhofer  
Zoning Hearing Examiner**